nesses; they said it was not necessary as there was no issue of fact.

As I have said the whole case as pleaded is, was the purchase of the house by the plaintiff's son an act which enabled the defendants to invoke section 48A?

The question for decision is, is the plaintiff's son an authorised occupier as defined by the Act.

An authorised occupier means a person who is named in an application made to the Board as the person who intends to reside in the flat or a person who is authorised in writing by the Board to reside therein. In this case there is no application for the flat at all. There cannot possibly be a person who is named in the application.

However, there is a Memorandum prepared by the defendants with a "List of Permitted Occupiers as per Schedule "A" of the Tenancy Agreement" and the plaintiff's son, Wong Kum Yuen, is in the list (AB 7).

This Memorandum was dated March 23, 1974, and stated that "We have received an application to purchase Board's flat under the "Home Ownership" scheme from Mr. Wong Yip Pui and a family of four members". It was made by E.O. (Sales) and addressed to E.O. (K) with a request to investigate and submit a report on the tenancy of the said premises as detailed in the form. E.O. (K) reported under "List of Permitted Occupiers as per Schedule "A" of the Tenancy Agreement" the names of the plaintiff, his wife and three children, one of them being Wong Kum Yuen. At the bottom of the form there is a remark that the applicant is the lessee of the said premises.

This Memorandum was made four years after the completion of the sale of the said premises and the tenancy agreement to which there was a Schedule "A" had terminated 4 years previously. The remark that the plaintiff is the lessee of the said premises obviously refers to the Lease of April 14, 1970. It is impossible that the Board could have received an application to purchase Board's flat under the "Home Ownership" Scheme from the plaintiff. The list of "Permitted Occupiers as per Schedule "A" of the Tenancy Agreement" has nothing to do with "authorised occupier" defined in the Amendment Act. The type of accommodation described in the Memorandum was "three room flat sold property".

The Housing and Development (Amendment) Act was passed in 1975. It is clear from the terms of the Memorandum that no part of the document could possibly be referring to the 1975 Amendment.

It is not in dispute that in 1970 the plaintiff did not apply to buy the said premises. It was the Board which approached him to buy it. It is obvious that the Memorandum AB 7 is appropriate where a tenant applies to the Board to buy a flat and investigation would be necessary for the Board to decide whether to sell the flat or not. In the present case it was not stated whether the plaintiff's application was recommended or not recommended for purchase of Board's flat but there was a remark that "Applicant is the lessee of the above flat, please". It cannot be suggested that AB 7 was in reality an application for a flat which had already been sold.

It is clear that the plaintiff's son is not an "authorised occupier" as defined in the Act, there being no person named in the application made to the Board and no authorisation in writing by the Board.

There will be judgment for the plaintiff and costs. There will be an order in terms of prayers (a), (b) and (c) claimed in paragraph 16 of the Statement of Claim. The counterclaim is dismissed with costs.

Claim allowed;
Counterclaim dismissed.

Solicitors: *G. Murugaiyan; Shook Lin & Bok*

P.N. ELECTRONIC PTE. LTD. v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) December 14, 1984]
[Singapore – Magistrate's Appeal No. 97 of 1983]

Provident Fund – Central Provident Fund contributions by employer – Transportation allowances paid to employees – Whether wages – Reimbursement of transport expenses – Whether salary – Central Provident Fund Act (Cap. 121), ss.2, 7 & 29(1).

Provident Fund – "Remuneration" – Meaning of.

The appellant company was charged, convicted and fined by a Magistrate's Court on six charges under section 29 (1) of the Central Provident Fund Act ("the Act") in that

in respect of six employees the company failed to pay contributions in accordance with the rates payable as required by section 7 of the Act. The company appealed and the only issue raised by the company was whether the transportation allowances paid to the six employees under clause 26 (a)(ii) and (b) of a Collective Agreement dated March 31, 1978 fall within the definition of "wages" in section 2 of the Act. "Wages" is defined thereunder as "the remuneration in money, including any bonus, due or granted to a person in respect of his employment".

Held, allowing the appeal: (1) the payments made by the company under clause 26(a)(ii) were in the nature of reimbursements of transportation expenses incurred by the employees. Whenever an employee of the company is required to attend for work in circumstances which entitle him to transportation under clause 26(a) but the company is unable to supply its own transport, the employee has the immediate right under clause 26(b) to be reimbursed by the company for the transportation expense incurred by him;

(2) the fact that for administrative convenience the employee was not reimbursed immediately but was reimbursed at the same time as his salary did not alter the nature of the payment from reimbursement to reward for services rendered.

Case referred to:

(1) *Botham* v. *Torbay Corporation* [1974] 72 L.G.R. 590.

MAGISTRATE'S APPEAL.

David Chelliah for the appellants.
Tan Siong Thye (Deputy Public Prosecutor) for Public Prosecutor.

Cur. Adv. Vult.

Wee Chong Jin C. J.: The appellant company was charged, convicted and fined by a Magistrate's Court on six charges under section 29(1) of the Central Provident Fund Act ("the Act") in that in respect of six employees the company failed to pay contributions in accordance with the rates payable as required by section 7 of the Act. The company appealed and the only issue raised by the company was whether the transportation allowances paid to the six employees under Clause 26 (a)(ii) and (b) of a Collective Agreement dated March 31, 1978 fell within the definition of "wages" in section 2 of the Act.

Clause 26 of the Collective Agreement provides:—

"26 TRANSPORT & TRANSPORTATION ALLOWANCE
(a) The Company shall not provide any transport for the employee except as follows:

(i) To and from any worksite other than the Company's premises at which the employee is required to work by the Company.

(ii) From the employee's normal place of abode to the Company's premises, if the employee is required to work before or after normal working hours or on any rest day or public holiday.

(b) If the employee is entitled to transport under any of the provisions of sub-clause (a) of this Clause and the Company cannot supply its own transport than the employee may claim reimbursement of the actual taxi-fare for the journey involved."

Section 2 of the Act defines "wages" as follows:—

"Wages means the remuneration in money, including any bonus, due or granted to a person in respect of his employment."

The facts can be stated briefly. The company provides ship repair services and it employed workers who, because of the nature of the company's business, were often called on to work unpredictable hours. Employees of the company who claimed to be entitled to "reimbursement" under Clause 26(b) of the Collective Agreement were required to submit claim forms by filling in a card system. The claims of each employee varied in amount from month to month and claims were paid by the company together with the salary. The claims were calculated in accordance with Clause 26(b) of the Collective Agreement.

The crucial question, therefore, was the meaning of the word "remuneration" in that definition. Of the several authorities referred to during the argument on the meaning of the word "remuneration" in statutory enactments the case of *Botham* v. *Torbay Corporation* [1] was, in my opinion, of most assistance. In that case the Court of Appeal considered the meaning of "remuneration" as used in Article 66 of a statutory instrument known as the Torbay Order, 1966. Para (3)(a) of that Article reads:—

"Every officer transferred by paragraph (1) or (2) to the employment of the county borough council shall, so long as he continues in that employment by virtue of the transfer and until he is served with a statement in writing of new terms and conditions of employment, enjoy terms and conditions of employment not less favourable than those he enjoyed immediately before the appointed day. The said terms and conditions shall be such that – (1) so long as the officer is engaged in duties reasonably comparable to those in which he was engaged immediately before the appointed day the scale of his salary or remuneration, and (ii) the other terms and conditions of his employment are not less favourable than those he enjoyed immediately before the appointed day, and any question whether duties are reason-

ably comparable as aforesaid shall be determined by a tribunal established under section 12 of the Industrial Training Act, 1964."

The plaintiff sought a declaration that he was entitled to have a "home to office" mileage allowance because it was another term and condition of his employment and that because it was knocked off, the terms and conditions of his employment were less favourable. Denning M.R. said at page 594:–

"Bridge J. held that he was not. Now there is an appeal to this court. It depends on the interpretation of article 66(3)(a) of the Order of 1966. The first point is whether the home to office mileage allowance was remuneration within the words "salary or remuneration" in sub-paragraph (i) of article 66(3)(a). I think it was probably not "remuneration". In that paragraph "remuneration" means remuneration for services rendered, but not an expense allowance. This home to office allowance was more in the nature of an expense allowance. It was re-payment of expenses actually incurred. No one would call it "remuneration" if he was paid his bus fares or his train fares or his actual out-of-pocket expenses. So I would hold that this home to office mileage allowance was not remuneration."

Orr L.J. and Roskill L.J. agreed with Denning M.R. Orr L.J. said:–

"Notwithstanding the decision of the Divisional Court in *S. & U. Stores Ltd.* v. *Lee* [1969] 1 W.L.R. 626, which was in a different context and involved in my judgment a car allowance of a different kind, I have not been persuaded that the mileage allowance here in question falls within the term "remuneration" as used in paragraph (3)(a) of article 66 of the Order of 1966."

Roskill L.J. said:–

"As regards the first ground on which the judge decided the case against the plaintiff, namely, that the home to office mileage allowance was part of his remuneration, I respectfully agree with Lord Denning M.R., when he said that this was 'a near thing'. On the whole, I agree with Lord Denning M.R. that it was not."

The object of the Act, which provides a scheme for compulsory contributions by employees during employment, with compulsory contributions by employers, was to ensure as far as possible that every employed person on reaching the age of retirement had accumulated sufficient savings to provide for himself or herself after retirement. In the context of the object I was of the opinion that the word "remuneration" in that definition means reward for services rendered by an employee to his employer but does not include any payment unconnected with services rendered.

On the facts of the present case the payments made by the company pursuant to claims under Clause 26(a)(ii) of the Collective Agreement were payments in the nature of reimbursements of transportation expenses incurred by the employees. In my opinion, whenever an employee of the company is required to attend for work in circumstances which entitle him to transportation under Clause 26(a) but the company is unable to supply its own transport, the employee has the immediate right under Clause 26(b) to be reimbursed by the company for the transportation expense incurred by him. That being so, the fact that for administrative convenience the employee was not reimbursed immediately but was reimbursed at the same time as his salary did not alter the nature of the payment from reimbursement to reward for services rendered. For these reasons I allowed the appellant company's appeal.

Appeal allowed.

Solicitors: *Chelliah & Co.*

JORDACHE ENTERPRISES INC. v. MILLENNIUM PTE. LTD.

[O.C.J. (Thean J.) January 10, 1985]
[Singapore – Suit No. 5430 of 1982]

Trade mark – Close resemblance causing deception or confusion – Infringement of trade mark – Passing off – Injunction – Damages.

Passing off – Whether requirements satisfied.

The plaintiffs registered their trade mark "Jordache" on October 3, 1979 in Singapore in respect of men's and women's jeans. On May 10, 1982 they appointed a company as the sole agent for distribution and sale of jeans bearing the trade mark "Jordache" in Singapore. When the plaintiffs were making preparation to launch their jeans, the defendant, a Singapore company, were also preparing to launch on the market their jeans bearing the unregistered trade mark "Jordane". Upon discovery that the defendants had used the trade mark "Jordane", the plaintiffs immediately took out the present action against the defendants on December 14, 1982. Two issues, infringement and passing off, fell for decision.

Held: (1) looking at and listening to the two names "Jordache" and "Jordane" the Court ineluctably arrived at a conclusion that one so closely resembled the other as to be likely to deceive or cause confusion in the course of trade. The defendants by the use of their trade mark "Jordane" have infringed the plaintiff's trade mark "Jordache";

(2) the plaintiffs have failed to establish their claim for passing off;

(3) an injunction should be granted restraining the defendants and they must deliver to the plaintiffs for destruction all labels, marks, advertisements, documents and other materials bearing the trade mark "Jordane";